

LABOUR DEPARTMENT

The 7th June, 1985

No. 9/5/84-Lab./4937.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Bhiwani:—

BEFORE SHRI B. P. JINDAL,
PRESIDING OFFICER,
LABOUR COURT, ROHTAK
Reference No. 104 of 83

between

SHRI NAND RAM, WORKMAN AND THE
MANAGEMENT OF HARYANA ROADWAYS,
BHIWANI

Present:

Shri M. C. Bhardwaj, Authorised Representative for the workman.

Shri Vijay Vir Singh, Authorised Representative for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) the Governor of Haryana referred the following dispute, between the workman Shri Nand Ram, and the management of Haryana Roadways, Bhiwani, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/HSR/59-81/31175-80, dated 1st July, 1983:—

Whether the termination of service of Shri Nand Ram was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was working as a Driver with the respondent for the last 14 years and all through his work and conduct has been satisfactory and that the respondent choose to terminate his services,—vide order, dated 30th January, 1985 after holding farce of an enquiry, in which, principles of natural justice were flouted and he was not given an opportunity of participation and as such the order of termination based upon such an enquiry report is illegal. So, there is a prayer for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, claim of the workman has been controverted. It is alleged that the management has lost confidence in the workman and that his services were terminated after holding a valid and legal domestic enquiry. The charge against the workman was that he remained absent from duty without leave on 16th April, 1979 to 7th February, 1980, so, there is a prayer that the order of termination is legal and valid and the claim of the workman be negated.

4. In the rejoinder filed by the workman, pleas propounded by the respondent have been controverted and the parties entered upon the reference on the following issues framed on 10th August, 1983:—

- (1) Whether the management has lost confidence in the workman? OPR.
- (2) Whether the domestic enquiry conducted was fair and proper? If not, to what effect? OPR.
- (3) Whether the termination of service of Shri Nand Ram was justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri J. S. Yadav, the then General Manager, Haryana Roadways, Bhiwani, Shri Vijay Vir Singh, MW-2 and the workman appeared as his own witness as WW-1 and also examined WW-2 Shri Manphul Singh, Clerk, Haryana Roadways, Kaithal.

6. Authorised Representatives of the parties heard. My findings on the issues framed are as below:—

ISSUE NO. 1:

7. There is not an iota of evidence on the file as to how the management has lost confidence in the workman. So, this issue is answered against the respondent.

ISSUE NO. 2:

8. The learned Authorised Representative of the workman has made a statement in the Court today that he does not challenge the validity, legality of the enquiry report or the procedure adopted by the Enquiry Officer in conducting the same. So, this issue is answered in favour of the management.

9. Having conceded that the domestic enquiry against the workman was fair and proper, the learned Authorised Representative of the workman contended that he shall confine his contentions on the quantum of punishment of termination awarded to the workman.

10. Certain undisputed facts are that the workman proceeded on leave after getting the same sanctioned from 13th October, 1978 to 16th December, 1978. He applied for further extension from 19th December, 1978 to 15th April, 1979, which was sanctioned by the respondent without pay on 26th March, 1979. From 16th April, 1979 to 8th February, 1980, the workman remained absent without leave. This was the charge against him, for which, he was charge-sheeted and an enquiry was held, findings were given and the impugned order of termination was passed. It is also not in dispute that on 8th February, 1980, the workman was allowed to resume his duties without any formal order in that behalf passed by the General Manager, Haryana Roadways, Bhiwani. The order of termination is, dated 30th September, 1981. On behalf of the workman Shri Bhardwaj vehemently argued that the punishment of termination awarded to the workman is shockingly disproportionate to his proved mis-conduct of absenteeism from 16th April, 1979 to 7th February, 1980. In that behalf he cited a number of authorities, in which, the scope and ambit of section 11-A of the said Act has been discussed. authorities cited were 1983 (II) LLJ 386, *between Hindustan Machine Tools Limited, Bangalore and Mohmad Usman and another*, 1984(I), LLJ 128, *between Andhra Pradesh State Road Transport Corporation and Additional Labour Court-cum- Industrial Tribunal, Hyderabad and another* and 1983 (I) LLJ 261 *between R. N. Parmar and Gujarat Electricity Board*. The last authority was cited on behalf of the workman to repel the contention raised on behalf of the respondent that once the workman has admitted the charges levelled against him, the Court cannot interfere with the punishment awarded by the management. In this authority their Lordships observed in paragraph number 4 of the judgement as under :—

.....An employee facing a proceeding which could result in his economic death has a right to contest and resist it. He is not bound to admit the charges, or to plead guilt in order to enable him to invoke the jurisdiction of the Court under section 11-A to reduce the penalty. No such condition was engrafted by the Legislature and the Labour Court could not amend the statute by introducing such a rider. That he is ultimately found guilty at the departmental proceeding does not

necessarily mean that he was in fact guilty. But even if he is in fact guilty of the charge levelled against him, he has the right to invoke the powers of the Labour Court under section 11-A for reduction of the penalty. The provision itself postulates a finding of guilt warranting a punishment recorded after a contest and empowers the Labour Court to reduce the punishment all the same. Since the power can be exercised even after he is found guilty at the conclusion of the enquiry, where is the compulsion to plead guilty ?.....

11. So, from the observation quoted above and the Hon'ble Supreme Court authority cited in the preceding part of the judgement, it is fully established that the Labour Court has power under section 11-A to interfere with the punishment awarded to the workman on the basis of proved or admitted charges. Now adverting to the facts of the present case, the workman had put in 16 years of service with the respondent on the date of termination. Now he looks on the wrong side of 50 years. His admitted mis-conduct was that he over-stayed the leave period from 16th April, 1979 to 7th February, 1980. Surprisingly he was allowed to resume his duty without any formal order in that behalf on 8th February, 1980. In the Andhra Pradesh authority cited above a Conductor of the Roadways was dismissed from service for failure to issue tickets and collected fares from the passengers. In that situation their Lordships held that the punishment of termination awarded to the workman was not proper and the workman was ordered to be reinstated with continuity of service but with 75 per cent of back wages only from the date of passing of the impugned award. In the Supreme Court authority cited above the Hon'ble Supreme Court refused to interfere with the discretion exercised by the Labour Court in ordering reinstatement of the workman, because the punishment awarded to the workman was found to be highly disproportionate in relation to the charges of mis-conduct. In the present case, no such serious charge has been levelled or proved against the workman. He had proceeded on leave after getting the same sanctioned and then sent an application for extension, which was granted but without pay. He further over-stayed for about 9 months. In this situation of

the matter, I, find the punishment of termination awarded to the workman highly disproportionate in relation to his mis-conduct of overstaying the leave period. So, the workman is ordered to be reinstated with continuity of service but he shall be entitled to wages only from the date this award becomes implementable, i.e., after one month of the publication of the award. To be more precise, he shall not be entitled to back wages from the date of termination till the date he resumes his duties in implementation of this award. This discussion dispose of issue No. 3 also. The reference is

answered and returned accordingly. There is no order as to cost.

The 17th May, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 104/83/826, dated 31st May, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

The 21st June, 1985

No. 9/5/84-6Lab/5054.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Supersole India, Kunjpura Road, Karnal.

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA (HARYANA)

Ref. No. 5 of 1985

SHRI BALBIR SINGH, WORKMAN AND THE MANAGEMENT OF MESSRS SUPERSOLE INDIA, KUNJPURA ROAD, KARNAL.

Present.—

Shri Jang Bahadur, for workman.

None for respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred by clause (c) of subsection (i) of section 10 of the Industrial Disputes Act, 1947, referred the dispute between Shri Balbir Singh, workman and the management of M/s. Supersole India, Kunjpura Road, Karnal to Labour Court, Ambala. The terms of the reference are as under :—

Whether the termination of services of Shri Balbir Singh, workman, was justified and in order? If not, to what relief is he entitled to?

Workman Balbir Singh has alleged that he was in the employment of respondent-management since 1980 @ Rs 500 P. M. His services were terminated on 4th July, 1984 in contravention of section 25(f) of Industrial Disputes Act, 1947. He has claimed relief of re-instatement with continuity in service and full back wages.

For the service of respondent process were issued but respondent could not be served inspite of best efforts. Shri Jang Bahadur Singh Yadav authorised representative of workman volunteered to make statement. His statement was recorded. He stated that this reference be filed with the permission to restore it as soon as the workman will come to know the correct address of respondent-management. Workman shall get the reference restored. Accordingly reference is filed with permission to get it restored as and when so desired by workman.

Dated the 21st May, 1985,

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 1304, dated Ambala City, the 29th May, 1985.

Forwarded (four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6 Lab./5158.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s G. L. Book, Binding House, Pansari Bazar, Ambala Cantt:—

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA (HARYANA)

Reference No. 39 of 1985

between

SHRI TARA CHAND, WORKMAN AND THE MANAGEMENT OF MESSRS G. L. BOOK
BINDING HOUSE, PANSARI BAZAR, AMBALA CANTT

Present :—

None for workman.

Nemo for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred the dispute between Shri Tara Chand workman and the management of Messrs G. L. Book Binding House, Pansari Bazar, Ambala Cantt. The terms of the reference are as under :—

“Whether the termination of services of Shri Tara Chand, workman, was justified and in order? If not, to what relief is he entitled to?”

Workman Tara Chand alleged that he had been in the service of respondent-management since 20th April, 1983. Respondent withheld his pay pertaining to September and October and terminated services on 20th April, 1984. Notice was issued to respondent-management. Respondent was served for 19th April, 1985, but, in spite of service he did not appear. *Ex-parte* proceedings were taken up against the respondent. Reference was fixed for recording of *ex-parte* evidence for 20th May, 1985.

Today, neither workman nor his authorised representative appeared, so reference is dismissed in default.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court,
Ambala.

Dated the 20th May, 1985.

Endst. No. 1372, dated Ambala City, the 30th May, 1985.

Forwarded (four copies) to the Financial Commissioner, and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court,
Ambala.